

In the Senate of the United States,

September 25 (legislative day, September 22), 2000.

Resolved, That the bill from the House of Representatives (H.R. 4864) entitled “An Act to amend title 38, United States Code, to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under laws administered by the Secretary, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Veterans Claims Assist-*
3 *ance Act of 2000”.*

1 **SEC. 2. CLARIFICATION OF DEFINITION OF “CLAIMANT”**
 2 **FOR PURPOSES OF VETERANS CLAIMS.**

3 *Chapter 51 of title 38, United States Code, is amended*
 4 *by inserting before section 5101 the following new section:*

5 **“§ 5100. Definition of ‘claimant’**

6 *“For purposes of this chapter, the term ‘claimant’*
 7 *means any individual applying for, or submitting a claim*
 8 *for, any benefit under the laws administered by the Sec-*
 9 *retary.”.*

10 **SEC. 3. ASSISTANCE TO CLAIMANTS.**

11 *(a) REAFFIRMATION AND CLARIFICATION OF DUTY TO*
 12 *ASSIST.—Chapter 51 of title 38, United States Code, is fur-*
 13 *ther amended by striking sections 5102 and 5103 and in-*
 14 *serting the following:*

15 **“§ 5102. Application forms furnished upon request;**
 16 **notice to claimants of incomplete applica-**
 17 **tions**

18 *“(a) FURNISHING FORMS.—Upon request made by*
 19 *any person claiming or applying for, or expressing an in-*
 20 *tent to claim or apply for, a benefit under the laws admin-*
 21 *istered by the Secretary, the Secretary shall furnish such*
 22 *person, free of all expense, all instructions and forms nec-*
 23 *essary to apply for that benefit.*

24 *“(b) INCOMPLETE APPLICATIONS.—If a claimant’s ap-*
 25 *plication for a benefit under the laws administered by the*
 26 *Secretary is incomplete, the Secretary shall notify the*

1 *claimant and the claimant's representative, if any, of the*
2 *information necessary to complete the application.*

3 **“§ 5103. Notice to claimants of required information**
4 **and evidence**

5 “(a) *REQUIRED INFORMATION AND EVIDENCE.*—Upon
6 *receipt of a complete or substantially complete application,*
7 *the Secretary shall notify the claimant and the claimant's*
8 *representative, if any, of any information, and any medical*
9 *or lay evidence, not previously provided to the Secretary*
10 *that is necessary to substantiate the claim. As part of that*
11 *notice, the Secretary shall indicate which portion of that*
12 *information and evidence, if any, is to be provided by the*
13 *claimant and which portion, if any, the Secretary, in ac-*
14 *cordance with section 5103A of this title and any other ap-*
15 *plicable provisions of law, will attempt to obtain on behalf*
16 *of the claimant.*

17 “(b) *TIME LIMITATION.*—(1) *In the case of informa-*
18 *tion or evidence that the claimant is notified under sub-*
19 *section (a) is to be provided by the claimant, if such infor-*
20 *mation or evidence is not received by the Secretary within*
21 *one year from the date of such notification, no benefit may*
22 *be paid or furnished by reason of the claimant's applica-*
23 *tion.*

24 “(2) *This subsection shall not apply to any application*
25 *or claim for Government life insurance benefits.*

1 **“§ 5103A. Duty to assist claimants**

2 “(a) *DUTY TO ASSIST.*—(1) *The Secretary shall make*
3 *reasonable efforts to assist a claimant in obtaining evidence*
4 *necessary to substantiate the claimant’s claim for a benefit*
5 *under a law administered by the Secretary.*

6 “(2) *The Secretary is not required to provide assist-*
7 *ance to a claimant under this section if no reasonable possi-*
8 *bility exists that such assistance would aid in substan-*
9 *tiating the claim.*

10 “(3) *The Secretary may defer providing assistance*
11 *under this section pending the submission by the claimant*
12 *of essential information missing from the claimant’s appli-*
13 *cation.*

14 “(b) *ASSISTANCE IN OBTAINING RECORDS.*—(1) *As*
15 *part of the assistance provided under subsection (a), the*
16 *Secretary shall make reasonable efforts to obtain relevant*
17 *records (including private records) that the claimant ade-*
18 *quately identifies to the Secretary and authorizes the Sec-*
19 *retary to obtain.*

20 “(2) *Whenever the Secretary, after making such rea-*
21 *sonable efforts, is unable to obtain all of the relevant records*
22 *sought, the Secretary shall notify the claimant that the Sec-*
23 *retary is unable to obtain records with respect to the claim.*
24 *Such a notification shall—*

25 “(A) *identify the records the Secretary is unable*
26 *to obtain;*

1 “(B) briefly explain the efforts that the Secretary
2 made to obtain those records; and

3 “(C) describe any further action to be taken by
4 the Secretary with respect to the claim.

5 “(3) Whenever the Secretary attempts to obtain records
6 from a Federal department or agency under this subsection
7 or subsection (c), the efforts to obtain those records shall
8 continue until the records are obtained unless it is reason-
9 ably certain that such records do not exist or that further
10 efforts to obtain those records would be futile.

11 “(c) OBTAINING RECORDS FOR COMPENSATION
12 CLAIMS.—In the case of a claim for disability compensa-
13 tion, the assistance provided by the Secretary under sub-
14 section (b) shall include obtaining the following records if
15 relevant to the claim:

16 “(1) The claimant’s service medical records and,
17 if the claimant has furnished the Secretary informa-
18 tion sufficient to locate such records, other relevant
19 records pertaining to the claimant’s active military,
20 naval, or air service that are held or maintained by
21 a governmental entity.

22 “(2) Records of relevant medical treatment or ex-
23 amination of the claimant at Department health-care
24 facilities or at the expense of the Department, if the

1 *claimant furnishes information sufficient to locate*
2 *those records.*

3 *“(3) Any other relevant records held by any Fed-*
4 *eral department or agency that the claimant ade-*
5 *quately identifies and authorizes the Secretary to ob-*
6 *tain.*

7 *“(d) MEDICAL EXAMINATIONS FOR COMPENSATION*
8 *CLAIMS.—(1) In the case of a claim for disability com-*
9 *pensation, the assistance provided by the Secretary under*
10 *subsection (a) shall include providing a medical examina-*
11 *tion or obtaining a medical opinion when such an examina-*
12 *tion or opinion is necessary to make a decision on the*
13 *claim.*

14 *“(2) The Secretary shall treat an examination or opin-*
15 *ion as being necessary to make a decision on a claim for*
16 *purposes of paragraph (1) if the evidence of record before*
17 *the Secretary, taking into consideration all information*
18 *and lay or medical evidence (including statements of the*
19 *claimant)—*

20 *“(A) contains competent evidence that the claim-*
21 *ant has a current disability, or persistent or recur-*
22 *rent symptoms of disability; and*

23 *“(B) indicates that the disability or symptoms*
24 *may be associated with the claimant’s active military,*
25 *naval, or air service; but*

1 “(C) *does not contain sufficient medical evidence*
 2 *for the Secretary to make a decision on the claim.*

3 “(e) *REGULATIONS.—The Secretary shall prescribe*
 4 *regulations to carry out this section.*

5 “(f) *RULE WITH RESPECT TO DISALLOWED*
 6 *CLAIMS.—Nothing in this section shall be construed to re-*
 7 *quire the Secretary to reopen a claim that has been dis-*
 8 *allowed except when new and material evidence is presented*
 9 *or secured, as described in section 5108 of this title.*

10 “(g) *OTHER ASSISTANCE NOT PRECLUDED.—Nothing*
 11 *in this section shall be construed as precluding the Sec-*
 12 *retary from providing such other assistance under sub-*
 13 *section (a) to a claimant in substantiating a claim as the*
 14 *Secretary considers appropriate.”.*

15 “(b) *REENACTMENT OF RULE FOR CLAIMANT’S LACK-*
 16 *ING A MAILING ADDRESS.—Chapter 51 of such title is fur-*
 17 *ther amended by adding at the end the following new sec-*
 18 *tion:*

19 **“§5126. Benefits not to be denied based on lack of**
 20 ***mailing address***

21 *“Benefits under laws administered by the Secretary*
 22 *may not be denied a claimant on the basis that the claimant*
 23 *does not have a mailing address.”.*

1 **SEC. 4. DECISION ON CLAIM.**

2 *Section 5107 of title 38, United States Code, is amend-*
3 *ed to read as follows:*

4 **“§ 5107. Claimant responsibility; benefit of the doubt**

5 “(a) *CLAIMANT RESPONSIBILITY.—Except as other-*
6 *wise provided by law, a claimant has the responsibility to*
7 *present and support a claim for benefits under laws admin-*
8 *istered by the Secretary.*

9 “(b) *BENEFIT OF THE DOUBT.—The Secretary shall*
10 *consider all information and lay and medical evidence of*
11 *record in a case before the Secretary with respect to benefits*
12 *under laws administered by the Secretary. When there is*
13 *an approximate balance of positive and negative evidence*
14 *regarding any issue material to the determination of a mat-*
15 *ter, the Secretary shall give the benefit of the doubt to the*
16 *claimant.”.*

17 **SEC. 5. PROHIBITION OF CHARGES FOR RECORDS FUR-**
18 **NISHED BY OTHER FEDERAL DEPARTMENTS**
19 **AND AGENCIES.**

20 *Section 5106 of title 38, United States Code, is amend-*
21 *ed by adding at the end the following new sentence: “The*
22 *cost of providing information to the Secretary under this*
23 *section shall be borne by the department or agency pro-*
24 *viding the information.”.*

1 **SEC. 6. CLERICAL AMENDMENTS.**

2 *The table of sections at the beginning of chapter 51*
 3 *of title 38, United States Code, is amended—*

4 *(1) by inserting before the item relating to sec-*
 5 *tion 5101 the following new item:*

“5100. Definition of ‘claimant’.”;

6 *(2) by striking the items relating to sections*
 7 *5102 and 5103 and inserting the following:*

“5102. Application forms furnished upon request; notice to claimants of incom-
plete applications.

“5103. Notice to claimants of required information and evidence.

“5103A. Duty to assist claimants.”;

8 *(3) by striking the item relating to section 5107*
 9 *and inserting the following:*

“5107. Claimant responsibility; benefit of the doubt.”;

10 *and*

11 *(4) by adding at the end the following new item:*

“5126. Benefits not to be denied based on lack of mailing address.”.

12 **SEC. 7. EFFECTIVE DATE.**

13 *(a) IN GENERAL.—Except as specifically provided oth-*
 14 *erwise, the provisions of section 5107 of title 38, United*
 15 *States Code, as amended by section 4 of this Act, apply*
 16 *to any claim—*

17 *(1) filed on or after the date of the enactment of*
 18 *this Act; or*

19 *(2) filed before the date of the enactment of this*
 20 *Act and not final as of that date.*

1 (b) *RULE FOR CLAIMS THE DENIAL OF WHICH BE-*
2 *CAME FINAL AFTER THE COURT OF APPEALS FOR VET-*
3 *ERANS CLAIMS DECISION IN THE MORTON CASE.*—(1) *In*
4 *the case of a claim for benefits denied or dismissed as de-*
5 *scribed in paragraph (2), the Secretary of Veterans Affairs*
6 *shall, upon the request of the claimant or on the Secretary's*
7 *own motion, order the claim readjudicated under chapter*
8 *51 of such title, as amended by this Act, as if the denial*
9 *or dismissal had not been made.*

10 (2) *A denial or dismissal described in this paragraph*
11 *is a denial or dismissal of a claim for a benefit under the*
12 *laws administered by the Secretary of Veterans Affairs*
13 *that—*

14 (A) *became final during the period beginning on*
15 *July 14, 1999, and ending on the date of the enact-*
16 *ment of this Act; and*

17 (B) *was issued by the Secretary of Veterans Af-*
18 *fairs or a court because the claim was not well*
19 *grounded (as that term was used in section 5107(a)*
20 *of title 38, United States Code, as in effect during*
21 *that period).*

22 (3) *A claim may not be readjudicated under this sub-*
23 *section unless a request for readjudication is filed by the*
24 *claimant, or a motion is made by the Secretary, not later*
25 *than two years after the date of the enactment of this Act.*

1 (4) *In the absence of a timely request of a claimant*
2 *under paragraph (3), nothing in this Act shall be construed*
3 *as establishing a duty on the part of the Secretary of Vet-*
4 *erans Affairs to locate and readjudicate a claim described*
5 *in this subsection.*

Attest:

Secretary.

106TH CONGRESS
2D SESSION

H. R. 4864

AMENDMENT